

CIVIL SERVICE

CIVIL SERVICE COMMISSION

Selection and Appointment

Transfers

Proposed Amendments: N.J.A.C. 4A:4-7.1

Authorized By: Civil Service Commission, Robert M. Czech, Chair/CEO.

Authority: N.J.S.A. 11A:2-6(d) and 11A:4-16.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2010-089

A public hearing concerning the proposed amendment will be held on:

Tuesday, July 13, 2010, at 3:00 P.M.

Civil Service Commission Room

44 South Clinton Avenue

Trenton, New Jersey

Please call Elizabeth Rosenthal at (609) 984-7140 if you wish to be included on the list of speakers.

Submit written comments by August 20, 2010 to:

Henry Maurer, Director

Merit System Practices and Labor Relations

Civil Service Commission

P.O. Box 312

The agency proposal follows:

Summary

The Civil Service Commission proposes an amendment to N.J.A.C. 4A:4-7.1, which would change the requirements for a permanent transfer of an employee in local service. Currently, a permanent transfer in both State and local service requires the consent of the two organizational units, the former Department of Personnel (now the Civil Service Commission), and the affected employee. A proposed amendment to subsection (c) would only require the affected employee's consent to a transfer in State service, so that, in local service, the consent of only the organizational units and the Chair/CEO of the Commission would be required.

Additionally, an amendment to paragraph (c)2 is proposed. The paragraph currently states that the consent of the employee shall not be required when there is a transfer or combining of functions or operations across organizational unit lines. In light of the amendment making consent of the employee in local service unnecessary, paragraph (c)2 would be amended to refer only to State service. Technical amendments are also proposed to N.J.A.C. 4A:4-7.1(b) to correct existing cross-reference formats and to subsections (c), (d), (e) and (f), changing references to the "Department of Personnel" and the "Commissioner of the Department of Personnel" to the "Chair/CEO of the Civil Service Commission" in light of the changes resulting from P.L. 2008, c. 29.

As the Commission has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The Commission anticipates that local governments would enjoy greater operational flexibility as a result of the proposed amendment to N.J.A.C. 4A:4-7.1, which would improve services to taxpayers and afford employees a working environment in which they are best able to serve the mission of the agencies involved. It is noted that under subsection (f), 30 days' notice is still required for an involuntarily transferred employee, except for an emergency transfer or where the Chair/CEO of the Commission specifically permits a shorter notice period.

Economic Impact

A positive economic impact is anticipated for local governments that may need to consolidate agencies and services and the proposed amendment would facilitate such efficiencies. Additionally, employees would benefit because such efficiencies could take place without laying off employees no longer needed in certain programs.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendment would govern local government employee transfers and would not be subject to any Federal standards or requirements.

Jobs Impact

It is not anticipated that the proposed amendment to N.J.A.C. 4A:4-7.1 would cause the generation or loss of jobs. The proposed amendment would govern local government employee transfers.

Agriculture Industry Impact

It is not anticipated that the proposed amendment would have any agriculture industry impact. The proposed amendment would govern local government employee transfers.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed amendment would have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment would regulate employment in the public sector.

Smart Growth Impact

It is not anticipated that the proposed amendment would have any impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan as defined under Executive Order No. 4 (2002).

Housing Affordability Impact

Since the proposed amendment concerns employment in the public sector, the amended rule would have no impact on the number of housing units or the average cost of housing in New Jersey.

Smart Growth Development Impact

Since the proposed amendment concerns employment in the public sector, the amended rule would have no impact on new construction within Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan.

Full text of the proposed amendment follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

4A:4-7.1 Transfers within the same governmental jurisdiction

(a) A permanent transfer is the movement of a permanent employee between organizational units within the same governmental jurisdiction.

1. In State service, an organizational unit shall mean an appointing authority. The Department of Human Services shall constitute a single appointing authority for purposes of this subchapter.

2. In local service, an organizational unit shall mean a department or separate agency within the same county or municipality. A school district shall be considered a separate jurisdiction.

(b) If the transferred employee is concurrently appointed to a title other than that held on a permanent basis at the time of transfer to accurately reflect new duties, the permanent transfer shall be made in combination with appropriate promotional, lateral title change or voluntary demotion procedures. See N.J.A.C. 4A:4-2.4 [et seq.] **through 2.7**, [4A:4-]7.6 and [4A:4-]7.8, respectively.

1. The employee shall retain permanent status in the previously held permanent title with the recipient organizational unit until examination and working test period procedures are concluded.

2. If the employee does not successfully complete the examination or working test period procedures, the recipient organizational unit shall return the employee to his or her permanent title within this organizational unit pursuant to N.J.A.C. 4A:4-1.9 unless the employee has been disqualified for further employment.

(c) [A] **In local service, a permanent transfer shall require the consent of both organizational units[, the affected employee,] and the approval of the [Department of Personnel] Chair/CEO of the Civil Service Commission. In State service, the consent of the affected employee shall also be required.**

1. Consent may be withdrawn by any party prior to the effective date of the transfer.

2. [The] **In State service, the** consent of the employee shall not be required when there is a transfer or combining of functions or operations across organizational unit lines.

(d) A temporary transfer may be voluntary or involuntary and is the movement of a permanent employee between organizational units within the same governmental jurisdiction for a maximum of six months to effect economies, make available a needed service for short periods or for any other documented purpose, which is in

the best interest of the public service. All temporary transfers must be approved by the [Commissioner of the Department of Personnel] **Chair/CEO of the Civil Service Commission.**

(e) An emergency transfer may be voluntary or involuntary and is the movement of a permanent employee between organizational units within the same governmental jurisdiction for a maximum of 30 days.

1. The [Commissioner] **Chair/CEO of the Civil Service Commission** may authorize an emergency transfer when the appointing authority for the receiving unit certifies that the failure to make such transfer will result in harm to persons or property.

2. If there is a need to extend the emergency transfer beyond 30 days, the procedures governing temporary transfers must be followed.

(f) Any affected employee must be given at least 30 days' written notice of an involuntary transfer, except an involuntary emergency transfer, in which case reasonable notice must be given.

1. The notice shall contain the following:

i. The organizational unit to which the transfer is being made;

ii. The effective date of the transfer; and

iii. The reason for the transfer.

2. Less than 30 days' notice may be given where the employee gives his or her consent for a shorter notice period or the [Commissioner of the Department of Personnel] **Chair/CEO of the Civil Service Commission** finds that a more immediate transfer is required to provide a needed service.